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IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

CARPENTERS HEALTH AND WELFARE TRUST FUND FOR CALIFORNIA; CARPENTERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA; CARPENTERS VACATION AND HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA; CARPENTERS APPRENTICESHIP AND TRAINING TRUST FUND FOR NORTHERN CALIFORNIA; and CARPENTERS ANNUITY TRUST FUND FOR NORTHERN CALIFORNIA,
Petitioners,

v.

DEVELOPERS INSURANCE COMPANY, *et al.*,
Respondent.

Petition for a Writ of Certiorari to the California Court of Appeal First Appellate District

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 514(a) of the Employee Retirement Income Security Act of 1974 ("ERISA") as amended, 29 U.S.C. § 1144(a) provides that ERISA "shall supercede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan. . . ." The California State Appellate Court found that the California Stop Notice Statutes related to an ERISA plan and were thus preempted.

The question presented here is whether the state stop notice statutes, California Civil Code Sections 3156 *et seq.* and 3179 *et seq.* are preempted by ERISA because they relate to an employee benefit plan or whether the state statutes in question are statutes of general application which do not single out employee benefit plans for special treatment and are thus not preempted by ERISA.

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CARPENTERS HEALTH AND WELFARE TRUST FUND FOR CALIFORNIA; CARPENTERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA; CARPENTERS VACATION AND HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA; CARPENTERS APPRENTICESHIP AND TRAINING TRUST FUND FOR NORTHERN CALIFORNIA; and CARPENTERS ANNUITY TRUST FUND FOR NORTHERN CALIFORNIA,
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PETITION FOR A WRIT OF CERTIORARI

The Carpenters Health and Welfare Trust Fund for California; Carpenters Pension Trust Fund for Northern California; Carpenters Vacation and Holiday Trust Fund for Northern California; Carpenters Apprenticeship and Training Trust Fund for Northern California; and Carpenters Annuity Trust Fund for Northern California,

(hereinafter collectively referred to as "Carpenters Trust Funds" or "Trust Funds") respectfully pray that a Writ of Certiorari issue to review the California Supreme Court denial of a petition for hearing dated March 25, 1993 and the judgment and opinion of the California Court of Appeal, First Appellate District dated December 30, 1992.

OPINIONS BELOW

The opinion of the California Court of Appeal, First Appellate District (Appendix A 1a, *infra*) is reported at 11 Cal. App. 4th 1539, 15 Cal. Rptr. 2d 85 (1st Dist. 1992). That Court's opinion was filed on December 30, 1992. The California Supreme Court denied the Trust Funds' Petition for Review on March 25, 1993. (Appendix C 16a, *infra*). The order of the California Superior Court was filed on March 5, 1992 and is not reported (Appendix B 12a, *infra*).

JURISDICTION

The Trust Funds' Petition for Review to the California Supreme Court was denied on March 25, 1993. The California Court of Appeal, First Appellate District, affirmed the judgment on the Pleadings for Defendant granted by the Trial Court in an opinion dated December 30, 1992. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1). This petition is timely filed with this court pursuant to 28 U.S.C. § 2101(c).

STATUTES INVOLVED

The relevant statutory provisions are:

1. The Employee Retirement Income Security Act of 1974, ("ERISA"), as amended, 29 U.S.C. § 1144(a), (Section 514(a) of ERISA).

2. Sections 3156 *et seq.* and 3179 *et seq.* of the California Civil Code.

3. Sections 301 and 302 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. §§ 185 and 186.

STATEMENT OF THE CASE

The Trust Funds are multiemployer employee benefit plans within the meaning of ERISA (29 U.S.C. § 1001 *et seq.*) and are express trusts created by written trust agreements subject to and pursuant to Section 302 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 186. The underlying state court action arose under and was brought pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, which provides for concurrent jurisdiction in the state and federal courts.

On August 31, 1987, Jack Raley Construction, Inc. (hereinafter "Raley") became obligated to make fringe benefit contributions to the Trust Funds by virtue of a written collective bargaining agreement with the United Brotherhood of Carpenters and Joiners of America. These fringe benefit contributions were to be paid to the Trust Funds for each hour of covered carpentry work performed by Raley's employees.

Raley entered into a contract with the Housing Group, owner of the subject property described in the Stop Notice as Hidden Hills (hereinafter "Hidden Hills Project"). From June through September 1989, Raley's employees performed carpentry work at the Hidden Hills Project and Raley failed to pay fringe benefit contributions due and owing as a result of this work.

On October 30, 1989, the Trust Funds served Central Bank, the construction lender, with a bonded Stop Notice (Private Works), demanding that the Bank withhold sufficient money from the amounts the Bank owed pursuant to the loan agreement, but had not paid, in order to satisfy the claim of the Trust Funds against Raley. The Housing Group, as agent for the Bank, subsequently obtained a Stop Notice Release Bond. The Trust Funds

thereafter filed a complaint in Case Number C-90-02439 alleging a cause of action against the Housing Group's bonding company, Developers Insurance Company (hereinafter "Developers"). This action was consolidated and stayed with Action No. C-90-01652 to foreclose on a mechanics' lien for the same fringe benefits pending the decision of the California Supreme Court in *Carpenters Southern California Administrative Corporation v. El Capitan Development Company,* 53 Cal.3d 104 *cert. denied,* 116 L.Ed 2d 450, 112 S.Ct. 430 (1991). (See Court of Appeal Decision, Appendix A 3a-5a).

Developers brought a Motion for Judgment on the Pleadings below on the grounds that the Stop Notice Release Bond cause of action was preempted by § 514(a) of ERISA.

The trial court below granted Developers' Motion, citing the *El Capitan* case. The First District Court of Appeal affirmed the Trial Court's Decision. The California Supreme Court denied review of the Appellate Court's opinion.

REASONS FOR GRANTING THE WRIT

The Trust Funds contend that the California Appellate Court erred in finding that the California stop notice statutes are preempted by ERISA. Section 514(a) of ERISA states that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan . . ." 29 U.S.C. § 1144(a). The Appellate Court found that § 514(a) prohibits trust funds from using the state stop notice remedy because the stop notice provisions incorporate § 3111, the mechanics lien statute that specifically singled out Trust Funds for special treatment. (See Court of Appeal Decision Appendix A 8a). Petitioners respectfully contend that however broad the sweep of preemption, it does not preempt the Trust Funds' use of the stop notice statutes because those statutes are statutes of general application which do not

single out ERISA Trust Funds for special treatment. Therefore, the Court of Appeal erred when it extended *El Capitan's* holding to include the preemption of the state stop notice remedy. For the reasons set forth below, the Trust Funds will show that Congress never intended § 514 to go that far. Furthermore, the opinions of this Court have not held that statutes of general application are preempted by ERISA nor have the opinions of this Court created such a wooden and inflexible basis for preemption of state laws by § 514(a) of ERISA. The courts below unjustifiably relied on the *El Capitan* decision as a basis for automatically nullifying the State stop notice provisions of the Civil Code under the mistaken theory that all State statutes that merely make reference to ERISA Trust Funds are preempted. Furthermore, the California Appellate Court decision conflicts with decisions of this Court which have made a distinction between State statutes which single out ERISA plans for special treatment and thus relate to them versus State statutes of general application which function irrespective of a mere reference to an ERISA plan and are thus not permitted under 514(a) of ERISA. This is an important question of federal law which has been decided by the State Appellate Court in a way that conflicts with the applicable decisions of this Court.

I. THE LEGISLATIVE HISTORY OF ERISA CLEARLY DOES NOT SUGGEST NOR SUPPORT THE CALIFORNIA APPELLATE COURT'S DECISION THAT THE CALIFORNIA STOP NOTICE STATUTES ARE PREEMPTED BY ERISA.

"ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw v. Delta Airlines,* 463 U.S. 85, 90 (1983). ERISA was enacted "to safeguard employees from the abuse and mismanagement of funds that had been accumulated to finance various types of employee benefits." *Massachusetts v. Morash,* 490 U.S.

107, 112, (1989); citing *Fort Halifax Packing Co., Inc. v. Coyne,* 482 U.S. 1, 15, (1987).

To further its stated purposes of promoting the interest of employees and beneficiaries of ERISA plans, ERISA contains a preemption clause which is "conspicuous for its breadth," "deliberately expansive," and is intended "to establish pension plan regulation as exclusively a federal concern." *Ingersoll-Rand v. McClendon,* 498 U.S. 133, 138 (1990) (citations omitted). The preemption clause provides that ERISA "shall supercede any and all State laws in so far as they may now or hereafter relate to any employee benefit plan. . . ." 29 U.S.C. § 1144(a). The purpose of the preemption clause is to eliminate the threat of conflicting or inconsistent state and local regulation of employee benefit plans. *Fort Halifax Packing Co., Inc. v. Coyne,* 482 U.S. at 9. This court has mandated lower courts to consider whether preemption of a state's statutes would "further the [stated] purpose[s] of ERISA preemption." *Id.* at 8.

In determining whether a state statute is preempted by federal law and therefore invalid under the Supremacy Clause of the Constitution, this Court's sole task is to ascertain the intent of Congress. See *Shaw v. Delta Airlines, Inc.,* 463 U.S. 85, 95 (1983), *Malone v. White Motor Corp.,* 435 U.S. 497, 504 (1978). It is "the purpose of Congress that is the ultimate touchstone" of the preemption inquiry, *Malone v. White Motor Corp.,* 435 U.S. at 504 (quoting *Retail Clerks v. Schermerhorn,* 375 U.S. 96, 103 (1963)). Crucial to this analysis is to examine a statute against the backdrop of its legislative history and historical context. "[I]t is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers." *Steelworkers v. Weber,* 443 U.S. 193, 201 (1979), (quoting *Church of the Holy*

Trinity v. United States, 143 U.S. 457, 459 (1892). *See Train v. Colorado Public Interest Research Group, Inc.,* 426 U.S. 1 (1976); *United States v. American Trucking Assns.,* 310 U.S. 534, 543-544 (1940) *rehg. denied,* 311 U.S. 724 (1940). *California Federal Savings and Loan Ass'n. v. Guerra,* 479 U.S. 272, 284 (1987).

It is noteworthy that Congress knew at the time that it enacted ERISA that multi employer employee benefit plans were using state collection remedies such as the State stop notice statute at issue here. It is unreasonable therefore to conclude that Congress intended to supercede State collection remedies of general application in the absence of a direct reference to do so in the Congressional Record. When Congress has knowledge of and indeed cites a law it must "evince the requisite 'clear and manifest purpose' to supercede it. *See Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Community* 461 U.S. 190, 206 (1983)." *Guerra* 479 U.S. at 288.

Indeed, Congress expressed an intent that not all laws which simply mention an ERISA plan were meant to be preempted.

This court has previously cited and discussed Congress' intent regarding preemption in *Shaw v. Delta Airlines, Inc.,* 463 U.S. at 99. This Court found that the legislative history on its face is aimed at preempting only state laws that "regulate" ERISA plans. Preemption of such a law would then further the stated congressional purpose of "eliminating the threat of conflicting and inconsistent State and local regulation. 120 Cong. Rec. 29197 (1974)." Quotations from the Congressional Record as cited by this Court in *Shaw* are crucial to the preemption analysis and will be quoted here at length.

> "Statements by the bill's sponsors during the subsequent debates stressed the breadth of federal preemption. Representative Dent, for example, stated:

"Finally, I wish to make note of what is to many the crowning achievement of this legislation, the reservation to Federal authority the sole power to *regulate* the field of employee benefit plans. With the preemption of the field, we round out the protection afforded participants by *eliminating* the *threat* of *conflicting* and *inconsistent State and local regulation.*" 120 Cong. Rec. 29197 (1974).

Senator Williams echoed these sentiments:

"It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of *conflicting* or *inconsistent* State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which have the force or effect of law." *Id.* at 29933.20

"20. See also 120 Cong Rec. 29942 (1974) (remarks of Sen. Javits):

"Both [original] House and Senate bills provided for preemption of State law, but—one major exception appearing in the House bill—defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially *conflicting* States laws hastily contrived to deal with some particular aspect of private welfare or pension benefit plans not clearly connected to the Federal regulatory scheme."

"Although the desirability of further regulation—at either the State or Federal level—undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of *uniformity* with respect to inter-

> state plans required—but for certain exceptions—the displacement of State action in the field of private employee benefit programs."
>
> Senator Javits noted that the conferees had assigned the Congressional Pension Task Force the responsibility of studying and evaluating ERISA preemption in order to determine whether modifications in the preemption policy would be necessary. *Ibid.* See ERISA §§ 3021, 3022(a)(4), 88 State 999 (formerly codified at 29 USC §§ 1221, 1222(a)(5) [29 USCS §§ 1221, 1222(a)(5)]. After a period of monitoring by the Task Force, and hearings by the Subcommittee on Labor Standards of the House Committee on Education and Labor, a Report was issued evaluating ERISA's preemption provisions. The Report expressed approval of ERISA's broad preemption of state law, explaining that "the Federal interest and the need for *national uniformity* are so great that enforcement of state regulation should be precluded." H.R. Rep. No. 94-1785, p.47 (1977). The Report recommended only that the exceptions described in § 514(b) be narrowed still further. *Ibid.*
>
> *Shaw* 463 U.S. at 99-100. [emphasis supplied].

Congress, by its comments clearly intended to preempt only state laws that *conflicted* with ERISA in order to create a uniform system of regulation for ERISA plans. The legislative history and this courts prior decisions in no way endorse the interpretation of the California Appellate Court. Indeed this court has made the distinction that not all state laws and certainly not state laws of general application are preempted by § 502(a) of ERISA.

Moreover, when Congress added §§ 502(g) and 515 of ERISA, 29 U.S.C. §§ 1132(g) and 1145, pertinent legislative history from the hearings on the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, 94 State. 1208 ("MPPAA"), clearly shows that

Congress thought it was *not* preempting state collection remedies since Congress recognized the validity of post-ERISA state collection remedies. House Report No. 96-869(II) on H.R. 3609 of the House Committee of Ways & Means, 96th Cong. 2d., contains the following commentary on the then new collection provisions:

> The Committee's amendment provides that in the case of a civil action by any person to collect delinquent multiemployer plan contributions, *regardless of otherwise applicable law*, the court before which the action is brought may award the plaintiff (1) reasonable attorney's fees, (2) court costs and (3) liquidated damages not to exceed 20 percent of the amount of delinquent contributions as determined by the court. However, these items are to be awarded to a plaintiff only to the extent that the multiemployer plan in question provided for such an award. The bill preempts any state or other law which would *prevent* the award of reasonable attorney's fees, court costs or liquidated damages or which would limit liquidated damages to an amount below the 20 percent level. However, the bill does *not* preclude the award of liquidated damages in excess of the 20 percent level if an award of such a higher level of liquidated damages *is permitted under state or other law. The Committee amendment does not change any other type of remedy permitted under state or federal law with respect to delinquent multiemployer contributions.* [Emphasis supplied.]

This legislative history demonstrates that Congress *knew* that state law remedies were being used to effect collection of trust fund contributions after ERISA was enacted, that Congress did not intend to deprive trust funds of their existing collection remedies under state law, and that Congress wished to strengthen the trust funds' ability to make such collections by giving the trust funds an opportunity to collect double interest, liquidated damages, and attorney's fees.

Thus, preemption of the state's stop notice statutes would undermine the very purpose of ERISA, by depriving ERISA-regulated trust funds of state law remedies they possessed before ERISA was enacted. Nothing in the legislative history of ERISA supports such an absurd result, a result that is in fact directly contrary to the stated Congressional purpose of Section 514(a) of ERISA.

II. THE CALIFORNIA APPELLATE COURT DECISION IS IN CONFLICT WITH DECISIONS OF THIS COURT AND OTHER FEDERAL COURTS.

While this court has found ERISA's preemptive scope to be broad, it is not all-encompassing. For example, ERISA preempts only laws relating to employee benefit *plans*, it does not preempt laws relating to employee *benefits*. *Fort Halifax*, 482 U.S. 1, 11 (emphasis in original). ERISA does not preempt laws which regulate employers in their role as employers. *Lane v. Goren*, 743 F.2d 1337 (9th Cir. 1984). Nor does ERISA preempt areas of traditional state regulation, *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 740 (1985). Most importantly, ERISA does not preempt laws of general applicability which "function irrespective of the existence of an ERISA plan." *Ingersoll-Rand*, 498 U.S. at 139. Furthermore, [s]ome state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law '*relates to*' the plan. *Shaw*, 463 U.S. at 100, n.1.

It is instructive to note here that there are 10 decisions of this court dealing with ERISA preemption. All of these cases involve a finding of preemption only where the state law: (1) regulates the types of benefits provided by the terms of the benefit plans;[1] (2) creates reporting,

[1] See, e.g., *Shaw*, 463 U.S. 85, 100.

disclosure, funding, or vesting requirements for benefit plans; (3) provides rules for or interferes with the calculation of the amount of benefits to be provided under an ERISA plan [2] or (4) provides remedies for misconduct growing out of the administration of the ERISA plan.[3] *Martori Bros. Distributors v. James Massengale,* 781 F.2d 1349, 1356-57 Amended, 791 F.2d 799 (9th Cir.), *cert. denied,* 479 U.S. 149 (1986).

One additional category of laws that ERISA preempts are laws that specifically single out ERISA plans for special treatment and apply solely to ERISA plans. *Aetna Life Ins. Co. v. Borges,* 869 F.2d 142, 146 (2d Cir. 1989), *cert. denied* 493 U.S. 811 (1989). *See* also *Mackey v. Lanier Collections Agency & Services, Inc.,* 486 U.S. 825 (1988); *Arkansas Blue Cross & Blue Shield v. St. Mary's Hospital,* 947 F.2d 1341, 1344 (8th Cir. 1991), *reh'g denied en banc,* 1992 U.S. App. Lexis 367 (8th Cir. 1992), *cert. denied,* —— U.S. ——, 119 L. Ed. 2d 227, 112 S. Ct. 2305 (1992). Therefore, ERISA does not preempt state laws of general application that do not single out benefit plans for special treatment; that do not fall into one of the categories described in *Martori*; and that function "irrespective of the existence of an ERISA plan." *Ingersoll-Rand Co. v. McClendon,* 498 U.S. at 139 (1990). ERISA preemption does not extend to laws that have an incidental effect on or relationship to benefits or benefit plans. Statutes like the stop notice statutes at issue here may then make incidental reference to plans without coming within one of the categories of laws that are preempted by ERISA. The State Stop Notice Statutes at issue here are statutes of general appli-

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[2] See, e.g., *Allessi v. Raybestos-Manhattan, Inc.,* 451 U.S. 504, 524 (1981).

[3] See, e.g., *Pilot Life Insurance Co. v. Dedeaux,* 481 U.S. 41 (1987); *Ingersoll-Rand Co. v. McClendon,* 498 U.S. 133 (1990).

cation which do not single out ERISA regulated trust funds for special treatment. The California State Appellate Court erred when it found that the Stop Notice Statutes were preempted by ERISA.[4]

California Civil Code Section 3159 provides in pertnent part:

> "Any of the persons named in Sections 3110, 3111, and 3112 may, prior to the expiration of the period within which his or her claim of lien must be recorded under Chapter 2 . . ., give to a construction lender a stop notice or a bonded stop notice. If a payment bond has previously been recorded in the office of the County recorder where the site is located in accordance with Section 3235 or in accordance with Section 3162, then the construction lender shall withhold funds pursuant to a bonded stop notice filed by an original contractor and may, at its option, withhold funds pursuant to a stop notice or bonded stop notice given by anyone other than an original contractor. The construction lender may elect not to withhold pursuant to a bonded stop notice by reason of a payment bond having previously been recorded in the office of the County recorder of the County where the site is located in accordance with Section 3235."

Those individuals eligible under 3159 to serve a stop notice are "[m]echanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon . . . or furnishing materials or leasing equipment to be used or consumed

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[4] The Trust Funds action below was brought pursuant to California Civil Code Sections 3156 et seq. which apply to stop notices on private works. The California Court of Appeal held that both the private works stop notice provisions of the Civil Code (Sections 3156 et seq.) and the public works provisions (Sections 3179 et seq.) are preempted by ERISA.

in or furnishing appliances, teams, or power contributing to a work of improvement . . ." (§ 3110); or Section 3111 trust funds; or "[a]ny claimant who, at the instance or request of the owner . . . of any lot or tract of land, has made any site improvement. . . ." (§ 3112). (See California Court of Appeals Opinion Appendix A 9a).

The California Court of Appeals found that because the above constituted the same class of persons who could file a mechanics lien, that under *El Capitan,* the stop notice remedy was preempted. However, the California Appellate Court failed to note that the statute found preempted in *El Capitan* singled out and only applied to trust funds. Here, the statute is general in nature, does not single out trust funds for special treatment nor relate to trust funds in any manner articulated in *Martori.* In fact, this case falls squarely into the situation this Court addressed in *Mackey v. Lanier Collections Agency,* 486 U.S. 825 (1988).

In *Mackey* this Court held that a state antigarnishment statute which specifically prohibited garnishment of ERISA funds or benefits was preempted by ERISA. However, this Court also held that the state's *general* garnishment statute, which "does not single out or specially mention ERISA plans of any kind" (486 U.S. at 831) was *not* preempted by ERISA. This Court held that state statutes of *general application* are not preempted by ERISA. It is therefore clear that not all state remedies automatically single out ERISA plans for special treatment and not all state remedies are preempted.

Furthermore, the State stop notice statutes do not conflict or regulate the administration of benefits, a concern this court addresses in *Fort Halifax.*

The issue in *Fort Halifax* was whether a Maine statute requiring employers to provide a one-time severance payment to employees in the event of a plant closing was preempted by ERISA. This Court held that the statute

was not preempted by ERISA because it did not create any "potential for the type of conflicting regulation of benefit plans that ERISA preemption was intended to prevent." 482 U.S. at 14.

Fort Halifax contains a thorough and detailed analysis of the purpose of the preemption clause of Section 514(a) of ERISA. According to this Court, the preemption clause was designed "to establish a uniform administrative scheme which provides a set of standard procedures to guide processing of claims and disbursement of benefits." *Id.* at 9. Summarizing its discussions, this Court stated (*Id.* at 11):

> It is thus clear that ERISA's preemption provision was prompted by recognition that employers establishing and maintaining employee benefit plans are faced with the task of coordinating complex administrative activities. A patchwork scheme of regulation would introduce considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them. Preemption ensures that the administrative practices of a benefit plan will be governed by only a single set of regulations.

The *Fort Halifax* holding compels the conclusion that not all state statutes are preempted. State statutes which have no impact whatsoever on the processing of benefit claims and the disbursement of benefits are not preempted.

The *Fort Halifax* opinion goes on to hold that where a State statute does *not* implicate the concerns of ERISA's preemption provision—that is, the statute does not address the plan's internal administrative functions—there is no preemption: "If a State law creates no prospect of conflict with a Federal statute, there is no warrant for disabling it from attempting to address uniquely local social and economic problems." 482 U.S. at 19.

In a recent decision of the Federal Ninth Circuit Court of Appeals, a general State tax levy statute was held not to be preempted by ERISA. The lower Federal Court noted that the State statute "does not single out ERISA trusts" and "is a neutral law of general application authorizing the attachment of funds of delinquent taxpayers" regardless of where the funds come from. *Retirement Fund Trust v. Franchise Tax Board,* 909 F.2d 1266, 1281 (9th Cir. 1990). *See* also *Firestone Tire & Rubber Co. v. Neusser,* 810 F.2d 500 (6th Cir. 1987). Therefore, like the general garnishment statute in *Mackey,* the general State tax levy statute did not single out ERISA Trust Funds for special treatment and was therefore not preempted. The State law, like the general stop notice statute at issue here functioned irrespective of ERISA plans.

This Court has held that a general statute must do more than merely refer to an ERISA Plan. For example, in *FMC Corp. v. Holliday,* 498 U.S. 52 (1990), Pennsylvania's Statute was preempted because it not only referred to benefit plans but also imposed substantive requirements on the plans themselves (prohibiting them from requiring subrogation of rights against third parties).

Furthermore, this Court has recognized that some regulations which have traditionally been left to the states are not preempted. For example, in *Morash,* 490 U.S. at 115 this Court held that payment of wages was not preempted.

> "Absent any indication that Congress intended such far-reaching consequences, we are reluctant to so significantly interfere with 'the separate spheres of governmental authority preserved in our federalist system.' " *Morash,* 490 U.S. at 120, (citations omitted).

This Court in *Mackey* found that

> "any state law which singles out ERISA plans, by express reference, for Special Treatment is preempted.

> . . . It is this 'singling out' that preempts the Georgia Antigarnishment exception."

Mackey, 486 U.S. at 838.

The State stop notice statutes at issue here neither interfere with nor conflict with the congressional intent to establish uniformity in regulating a plan's claims-handling procedures. Furthermore, the State statutes neither fall within any of the *Martori* categories nor any other carved out categories of statutes that would be preempted under ERISA. The stop notice statutes clearly fall into the category of generally applicable State statutes that this court has previously found not to be preempted in *Mackey, Fort Halifax, Shaw,* and *Morash.* Furthermore, the statute, a general statute that provides a remedy to those who bestow their labor to the benefit of real property is a statute in an area of the law traditionally left to the States to regulate. Therefore, it would be an intrusion into the province of State regulation to find that such a statute was preempted by a Federal law such as ERISA without even coming within a stated Congressional purpose for doing so. This result must not be allowed.

III. THE APPELLATE COURT ERRED WHEN IT FOUND THE STOP NOTICE PROVISIONS OF THE CALIFORNIA CIVIL CODE ANALOGOUS TO THE MECHANICS' LIEN STATUTES.

The right to serve a stop notice against a private work differs from the right to record a mechanics' lien on a private project. The stop notice statutes, unlike the mechanics lien statutes are statutes of general applicabiltiy. The Civil Code Sections applicable to stop notices for private works are found at Chapter 3 of the Civil Code commencing with § 3156.

It is important here, and critical to the analysis, to distinguish between mechanics' liens on the one hand and stop notices on the other. The former is completely different from the latter, as the following analysis of the

statutory framework makes clear. The structure set out in the stop notice provisions of the Civil Code does not "relate to" or "regulate" any ERISA plan since they *do not create any additional funding mechanisms* nor do they single out ERISA plans for special treatment.

After receipt of a stop notice, a construction lender is not permitted to distribute any construction funds until the underlying dispute between the contractor or subcontractor and the stop notice claimant is resolved (unless a stop notice release bond is obtained (*see* Civil Code § 3162). Specifically, Civil Code § 3162 imposes on the construction lender the duty "to withhold from the borrower . . . sufficient money . . . to answer the claim . . .". The bonded stop notice procedure creates no new rights but merely puts a stop to the distribution of construction funds pending resolution of the underlying dispute.

El Capitan's holding that the mechanics' lien remedy provided for by § 3111 is preempted by ERISA is based on the California State Supreme Court's finding that § 3111 "purports to regulate employee benefit plans by providing an additional method of funding, namely a lien against real property, which is not provided by ERISA . . ." (*El Capitan* at p. 1052). The California State Supreme Court found in *El Captain* that mechanics' liens create new substantive rights against third party property owners, who otherwise would not have been liable for the delinquencies. By providing this "additional cause of action," this Court found that § 3111 "regulates" ERISA plans (*El Capitan* at p. 1051).

Unlike the mechanics' lien provision struck down in *El Capitan,* stop notices create no new rights to collect money against persons or property and, therefore, create no new funding mechanisms. The private work's stop notice merely puts a hold on the *distribution* of construction funds. In the instant case, the property owner, the Housing Group, created its own liability when it chose

to obtain a stop notice release bond from Developers and thus invoke the statutory framework of Civil Code § 3156 *et seq.* It is clear that under these facts the Trust Funds did not create any "liability" on the part of any additional parties and it was those parties' own voluntary acts which brought them into the litigation. The Trust Funds must not be penalized because of actions undertaken by the Housing Group and/or Developers.

The Housing Group could have protected its interests in other ways which would have obviated the need for the Trust Funds to make a claim on the construction funds. Upon learning of the financial difficulties of its contractor, the Housing Group could have issued joint checks payable to both Raley and the Trust Funds which would have insured payment of the fringe benefit contributions owed to the Trust Funds. Had the joint checks been issued, the entire stop notice procedure would have been unnecessary. Instead, The Housing Group chose to ignore the financial condition of its contractor, Raley, and issued checks payable only to Raley, ignoring the Trust Funds. As a result, the Trust Funds were forced to serve a private works stop notice in an attempt to protect the fringe benefit rights of the carpenters employed on the Hidden Hills Project.

The stop notices provisions at issue here treat ERISA plans no differently than any other claimant. The stop notice provisions do *not* expressly make reference only to Trust Funds. Accordingly, these state law provisions cannot be held to be preempted by ERISA.

This action is brought pursuant to § 301 of the Labor Management Relations Act, 1947, 29 U.S.C. § 185 ("LMRA"). The courts have repeatedly held that actions to compel payment of trust fund contributions may be maintained, both before and after the enactment of ERISA in 1974, under Section 301(a) of the LMRA. *See e.g., Audit Services, Inc. v. Rolfson,* 641 F.2d 757,

761 (9th Cir. 1981).[5] Therefore, the Trust Funds must not be penalized for actions undertaken by the Housing Group and must be allowed to utilize the general statute at issue here.

IV. THE APPELLATE COURT ERRED IN FINDING STOP NOTICE RIGHTS DERIVATIVE OF CIVIL CODE § 3111.

Civil Code §§ 3110, 3111 and 3112 describe at length the class of persons entitled to file mechanics' liens, including Trust Funds. (*See* Section II pages 15-16 *infra*). However, mere reference to the mechanics lien sections does not make stop notice rights derivative of mechanics' liens.

The Civil Code could have just as easily been organized in a manner in which the provisions dealing with private works stop notices came *before* the mechanics' lien chapter. The legislature's decision to enact § 3158 as a shorthand method of incorporating previous sections where the entities had already been clearly described does not evidence any intent on the legislature's part to render the private work stop notice provisions derivative of the mechanics' lien provisions. Here, we are not even faced with a general statute that makes a reference to an ERISA Trust Fund. Here, we are faced with a general statute which refers to another statute (namely 3111) which has been found to single out ERISA regulated Trust Funds. Therefore, the statute at issue here does not even directly reference ERISA regulated Trust Funds but merely mentions another statute which mentions them. Given these

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[5] Federal and state courts have concurrent jurisdiction over actions brought pursuant to Section 301(a) of the LMRA. *See, e.g., Charles Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962); *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957). Section 514(d) of ERISA, 29 U.S.C. § 514(d), specifically exempts other federal laws from ERISA's preemptive reach. *See Shaw, supra*, 463 U.S. at 105.

attenuated circumstances it would be violating the letter and spirit of the preemption clause of ERISA to hold that the stop notice statutes are preempted.

CONCLUSION

For the reasons stated herein, it is respectfully requested that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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June, 1993

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APPENDICES

APPENDICES

APPENDIX A

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

(Super. Ct. No. C90 01652
Contra Costa County)

CARPENTERS HEALTH AND WELFARE TRUST FUND FOR CALIFORNIA, *et al.*,
Plaintiffs and Appellants,

v.

DEVELOPERS INSURANCE COMPANY, *et al.*,
Defendants and Respondents.

[Filed Dec. 30, 1992]

In *Carpenters So. Cal. Admin. Corp.* v. *El Capitan Development Co.* (1991) 53 Cal.3d 1041 (cert. den. Nov. 12, 1991, 112 S.Ct. 430), our Supreme Court held that Civil Code section 3111 [1], which creates liens on real

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[1] Civil Code section 3111 provides: "For the purposes of this chapter, an express trust fund established pursuant to a collective bargaining agreement to which payments are required to be made on account of fringe benefits supplemental to a wage agreement for the benefit of a claimant on particular real property shall have a lien on such property in the amount of the supplemental fringe benefit payments owing to it pursuant to the collective bargaining agreement."

All further statutory references are to the Civil Code unless otherwise indicated.

property in favor of trust funds established pursuant to collective bargaining agreements, is preempted by the Employment Retirement Income Security Act of 1974 (ERISA). (29 U.S.C. § 1001 et seq.) The question before us is whether the same thing is true relative to stop notice statutes, as pertains to these same trust funds. (§ 3156 et seq. & § 3179 et seq.[2]) We hold that it is.

I

The named plaintiffs in this suit are: Carpenters Health and Welfare Trust Fund for California, Carpenters Vacation and Holiday Fund for Northern California, Carpenters Apprenticeship and Training Trust Fund for Northern California, and Carpenters Annuity Trust Fund for Northern California (Carpenters' Trust Funds). These are multi-employer trust funds established under collective bargaining agreements and employee pension benefit plans or employee welfare benefit plans within the meaning of ERISA. (See 29 U.S.C. § 1002(1), (2)(A), & (21)(A).) These trust funds are funded through employer contributions for covered employees. In this case, the covered employees are members of unions affiliated with the United Brotherhood of Carpenters and Joiners of America (Union).

In September 1988, The Housing Group—Northern California (Housing Group), as owner of certain real property in Danville, executed plans to develop its property into a residential subdivision known as the "Hidden Hills Development." It contracted with Jack Raley Construction, Inc. (Raley Construction), to do the rough carpentry work and framing for the 43-unit development. Raley Construction performed this work between September 1988 and September 1989 using employees covered by the Carpenters' Trust Funds.

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[2] The stop notice procedures outlined in section 3156 et seq. apply to private works while those outlined in section 3179 et seq. apply to public works.

In their complaint, plaintiffs allege that prior to its involvement in the development, Raley Construction entered into a collective bargaining agreement with the Union which incorporates "the Carpenters' Master Agreement for Northern California and the various trust agreements establishing each of Plaintiffs' trusts. By these agreements [Raley Construction] promised that it would pay to the Carpenters' Trust Funds fringe benefit contribution[s] at [specified] rates . . . for each hour of covered carpentry work . . . ." However, according to the complaint, during the months of June, July, August and September 1989, the company failed to make the agreed contributions. As a consequence, plaintiffs allege that Raley Construction owes the Carpenters' Trust Fund $82,154.67 plus interest.

To secure their claim, plaintiffs, on October 16, 1989, recorded mechanics' liens with the county recorder's office against certain lots in the Hidden Hills Development, pursuant to section 3111. Thereafter, in order to release the real property from these liens, the Housing Group obtained a release bond from defendant Developers Insurance Company (Developers). Developers assumed the role of a surety by way of the transaction. The release bond was recorded with the county on or about November 30, 1989. Then on April 18, 1990, plaintiffs filed a complaint for enforcement of the mechanics' liens release bond against Developers. Developers answered the complaint. Additionally, Developers and the Housing Group filed a cross-complaint against Raley Construction for indemnity and alleged breach of contract.[3]

Plaintiffs took additional action as well. On October 27, 1989, plaintiffs served Central Bank, the construction lender on the Hidden Hills Development, with a bonded

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[3] Based on the cross-complaint and Raley Construction's answer to the cross-complaint, it appears that Raley Construction did not compete the work on the Hidden Hills project but ceased participation in the project sometime around September 1989 and, thereafter, filed Chapter 11 bankruptcy proceedings.

stop notice, pursuant to section 3159.[4] The notice required Central Bank to withhold sufficient money from the construction loan to cover plaintiffs' claim. On or about April 11, 1990, the Housing Group secured a release of the stop notice bond from Developers. The effect of the release was to prevent plaintiffs from enforcing the stop notice and to substitute the bond as a basis for payment of all unpaid fringe benefit contributions. In response, plaintiffs, on June 4, 1990, filed a complaint against Developers for enforcement of the stop notice release bond.

Subsequently, both complaints filed by plaintiffs were consolidated and stayed pending the Supreme Court's decision in *Carpenters So. Cal. Admin. Corp.* v. *El Capitan Development Co., supra,* 53 Cal.3d 1041, pursuant to the parties' stipulation. Part of that stipulation states: "The undersigned parties further agree that the issue presened in the *El Capitan Development* Case is dispositive of the question of ERISA preemption of the lien and/or stop notice in this action." The *El Capitan* decision was handed down in June 1990. Based on that decision and the parties' stipulation, Developers filed a motion for judgment on the pleadings. Following a hearing, the trial court granted the motion as to both the stop notice claims

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[4] Section 3159 provides in pertinent part: "Any of the persons named in Sections 3110, 3111, and 3112 may, prior to the expiration of the period within which his or her claim of lien must be recorded under Chapter 2 . . . , give to a construction lender a stop notice or a bonded stop notice. If a payment bond has previously been recorded in the office of the county recorder where the site is located in accordance with Section 3235 or in accordance with Section 3162, then the construction lender shall withhold funds pursuant to a bonded stop notice filed by an original contractor and may, at its option, withhold funds pursuant to a stop notice or bonded stop notice given by anyone other than an original contractor. The construction lender may elect not to withhold pursuant to a bonded stop notice by reason of a payment bond having previously been recorded in the office of the county recorder of the county where the site is located in accordance with Section 3235."

and the mechanic's lien claims. Plaintiffs appeal only from that portion of the judgment pertaining to the stop notice claims.

II

In *El Capitan, supra,* Carpenters Southern California Administrative Corporation (CSCAC), the administrator of various multi-employer trust funds established under collective bargaining agrements (including the Carpenters' Trust Funds), brought suit to foreclose certain mechanics' liens it had filed against certain real property owned by the El Capitan Development Company (El Capitan). The liens were filed pursuant to section 3111. El Capitan was in the process of building a condominium project on the property. The general contractor of the project had subcontracted with Pacific Southwest Framing (Pacific) to do part of the framing work. In its complaint, CSCAC alleged that Pacific and John Hall Enterprises were one and the same entity and that the latter company was delinquent in making fringe benefit contributions to CSCAC pursuant to a collective bargaining agreement. El Capitan demurred to CSCAC's complaint, arguing that ERISA preempted section 3111. The trial court granted the demurrer with leave to amend. When CSCAC declined to amend the complaint, the trial court entered a judgment of dismissal. The Court of Appeal concluded that ERISA preempted section 3111 and affirmed the judgment of dismissal. The Supreme Court affirmed the Court of Appeal decision.

In reaching its decision, the *El Capitan* court looked initially at ERISA's broad preemption provision which expressly covers " 'any and all state laws insofar as they may now or hereafter *relate to* any employee benefit plan . . . .' [Citation.]" (*Carpenters So. Cal. Admin. Corp.* v. *El Capitan Development Co., supra,* 53 Cal.3d at p. 1047.) Nothing that the term "relate to" had been broadly interpreted by the United States Supreme Court, it said, "Most recently, in [*Ingersoll-Rand Co.* v. *Mc-*

Clendon (1990) 498 U.S. ——], [that] court explained that '. . . Congress used those words in their broad sense, rejecting more limited pre-emption language that would have made the clause "applicable only to state laws relating to the specific subjects covered by ERISA." ' [Citation.] This is consistent with the court's previous instruction in [*Pilot Life Ins. Co.* v. *Dedeaux* (1987) 481 U.S. 41] that ' "a state law 'relate[s] to' a benefit plan, 'in the normal sense of the phrase, *if it has a connection with or reference to such a plan.*' " ' [Citation.] . . . [¶] In determining whether section 3111 'relates to' a benefit plan, we take note that the United States Supreme Court has on several occasions stated that 'state laws which make "reference to" ERISA plans are laws that "relate to" those plans within the meaning of § 514 (a) [of ERISA].' [Citations.] Indeed, the court has 'virtually taken it for granted that state laws which are "specifically designed to affect employee benefit plans" are pre-empted . . . .' [Citation.]" (*Carpenters So. Cal. Admin. Corp.* v. *El Capitan Development Co., supra,* 53 Cal.3d at pp. 1048-1049, emphasis added.)

Focusing directly on section 3111, the *El Capitan* court found that the statute is specifically designed to affect employee benefit plans. It said, "The section expressly refers to 'trust fund[s] established pursuant to a collective bargaining agreement' and provides to such funds a mechanic's lien remedy not provided by Congress. Thus, [it] singles out ERISA plans for special treatment." (*Carpenters So. Cal. Admin. Corp.* v. *El Capitan Development Co., supra,* 53 Cal.3d at p. 1049.) The court further reasoned, "ERISA plans do not furnish labor or materials for construction projects. Accordingly, to treat them as persons who do furnish labor or materials is to single them out for special treatment. Because section 3111 singles out ERISA plans for special treatment and is, in fact, designed to affect them specifically, we conclude the statute 'relates to' ERISA plans. [Fns. omitted.]" (*Ibid.*)

The *El Capitan* court rejected any notion that the preemption question turns on a finding that the law at issue actually regulates an ERISA plan. Nevertheless, it noted that when it *can* be said that a state law regulates the terms and conditions of an ERISA plan, this necessarily includes a finding that the law "relates to" the plan as well. It said it found that section 3111 regulates ERISA plans by creating a funding mechanism not provided by Congress [i.e., a lien against real property]. "Hence, the fact that section 3111 regulates ERISA plans provides further support for the conclusion that section 3111 'relates to' ERISA plans and is preempted." (*Id.*, at p. 1051.)

"In essence, section 3111 creates a new state cause of atcion for the collection of contributions owed to benefit plans and makes an additional entity liable for such contributions. . . . [¶] [However,] ERISA preempts new state-law causes of action for the collection of contributions because, consistent with its goal of providing 'appropriate sanctions and ready access to federal courts' [citation], ERISA itself provides the remedies for the collection of contributions." [5] (*Id.*, at p. 1052.)

Finally, differentiating section 3111 from a Georgia general garnishment statute which the United States Supreme Court held was not federally preempted in *Mackey* v. *Lanier Collections Agency & Serv.* (1988) 486 U.S. 825, the *El Capitan* court said, "*Mackey*'s analysis of Georgia's general garnishment procedures does not save section 3111 from preemption. The decision concerned a third party action for enforcement of judgments against beneficiaries of an ERISA plan. ERISA does not contain remedial provisions for such actions. Largely for this reason, the United States Supreme Court concluded that 'state-law methods for collecting money judgments

[5] Under section 502(a) of ERISA (29 U.S.C. § 1132(a)), a participant, beneficiary or fiduciary can bring a civil action against a delinquent contributor.

must, as a general matter, remain undisturbed by ERISA; otherwise, there would be no way to enforce such a judgment won against an ERISA plan.' [Citation.] The present case is not similar because ERISA expressly provides remedies for recovery of delinquent contributions to employee benefit plans." (*Id.*, at p. 1055.)

"California's trust fund lien statute does more than provide a new enforcement mechanism for collecting judgments; it creates new substantive rights. [Citation.] Section 3111 permits the creditor (the trust fund) to enforce a debt (for outstanding fringe benefit Contributions) not against the debtor (the defaulting employer), but against the property of a third party that is not a party to the collective bargaining agreement. Section 3111 gives a trust fund a right to a lien against the property of third parties, such as El Capitan, that the fund would not, and does not, have under ERISA. In the absence of section 3111, El Capitan would have no liability to the funds for the fringe benefit contributions. Therefore, section 3111 cannot be upheld under *Mackey* as it creates a new substantive right against the property of a third party that is not created by ERISA and, thus, goes beyond being a mere means of enforcing a judgment. [Citation.]" (*Carpenters So. Cal. Admin. Corp.* v. *El Capitan Development Co., supra,* 53 Cal.3d at p. 1055.)[6]

III

In the same way the mechanic's lien procedure outlined in *El Capitan* was found to be preempted by ERISA, the stop notice procedure at issue in the instant case is preempted as well. By their terms, the stop notice provisions (§ 3156 et seq. & § 3179 et seq.) incorporate section 3111 by reference, thereby making express reference to the entities covered by section 3111—i.e.,

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[6] Subsequent to the *El Capitan* decision, the United States Court of Appeals, Ninth Circuit, also found that section 3111 is preempted by ERISA. (*Sturgis* v. *Herman Miller, Inc.* (9th Cir. 1991) 943 F.2d 1127.)

"trust fund[s] established pursuant to a collective bargaining agreement." As was found in the case of section 3111, this part of the stop notice provisions "relates to" ERISA plans by virtue of the fact that it is specifically designed to affect them. It provides such funds a stop notice remedy not provided by Congress, thus singling out ERISA plans for special treatment.

Section 3159 states, "Any of the persons named in Sections 3110, 3111, and 3112 may . . . give to a construction lender a stop notice or a bonded stop notice." As so defined, "persons" eligible to file a stop notice or a bonded stop notice are "[m]echanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon . . . on, or furnishing materials or leasing equipment to be used or consumed in or furnishing appliances, teams, or power contributing to a work of improvement . . . ." (§ 3110); or section 3111 trust funds; or "[a]ny claimant who, at the instance of request of the owner . . . of any lot or tract of land, has made any site improvement . . . ." (§ 3112). This is the same category of entities eligible to file mechanics' liens under section 3109 et seq. As was noted in *El Capitan* in relation to the latter provisions, "ERISA plans do not furnish labor or materials for construction projects. Accordingly, to treat them as persons who do furnish labor or materials is to single them out for special treatment." (*Carpenters So. Cal. Admin. Corp.* v. *El Capitan Development Co., supra,* 53 Cal.3d at p. 1049, fn. omitted.)

Because the stop notice statutes single out ERISA plans for special treatment and are, in fact, designed to affect them specifically, we conclude that they "relate to" these plans and are preempted. (*Ibid.*)

Moreover, while not a prerequisite to a preemption finding, the stop notice procedure like the lien procedure, regulates ERISA plans by creating a funding mechanism not provided by Congress [i.e., a hold on construction loan monies]. It creates a new state cause of action for the collection of contributions owed to benefit plans and makes an additional entity liable for such contributions.

Plaintiffs here attempt to distinguish the stop notice provisions from the lien provisions. They argue that the stop notice procedure does not create any additional funding mechanism or any new substantive rights but merely mandates that the construction lender set aside funds it would normally pay the contractor until the dispute is settled. We find appellants' argument unpersuasive.

As pertains to section 3111 trust funds, the stop notice procedure functions similarly to the lien procedure. It permits the creditor (the trust fund) to enforce a debt (for outstanding fringe benefit contributions) not against the debtor (the defaulting employer), but against the property of a third party that is not a party to the collective bargaining agreement. The only difference is that whereas the lien procedure involves liens, the stop notice procedure involves stop notices. Both, however, operate as encumbrances on property—one encumbering real property, the other encumbering construction loan money. Both give the trust fund a right to an encumbrance against the property of third parties that the fund would not, and does not, have under ERISA.[7] In the absence of the stop notice procedure, neither the Housing Group nor Developers would have any liability to the Carpenters' Trust Funds for the fringe benefit contributions.

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[7] Here, the third party was originally the Housing Group as the named debtor on the construction loan from Central Bank. However, this position was assumed by Developers as the surety.

Judgment is affirmed.[8]

MERRILL, J.

We concur:

WHITE, P. J.

WERDEGAR, J.

[8] Developers also contend that plaintiffs cannot prevail on appeal because the parties stipulated that the *El Capitan* decision would be determinative of the ERISA preemption issue in respect to mechanics' liens and stop notices. Plaintiffs respond that the stipulation does not preclude the appeal as the Supreme Court in *El Capitan* did not reach the premeption question as to stop notices. In view of our decision on the merits, we find it unnecessary to determine the effect of the stipulation.

APPENDIX B

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

Case No. C 90 01652

CARPENTERS HEALTH AND WELFARE TRUST FUND FOR CALIFORNIA, *et al.*,
Plaintiffs,

v.

DEVELOPERS INSURANCE COMPANY, *et al.*,
Defendants.

THE HOUSING GROUP, THE HOUSING GROUP—NORTHERN CALIFORNIA,
Cross-Complainants,

v.

JACK RALEY and JACK RALEY CONSTRUCTION, INC.,
Cross-Defendants.

ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS

[Filed Mar. 5, 1992]

The matter having come on for hearing on November 26, 1991 upon noticed Motion by Defendant Developers Insurance Company and the court having considered the papers and arguments presented by the parties,

IT IS HEREBY ORDERED that Defendant's Motion for Judgment on the Pleadings is granted as to both the stop notice claims and mechanic's lien claims by Plaintiffs Carpenters Health and Welfare Trust Fund for California, Carpenters Vacation and Holiday Fund for Northern California, Carpenters Apprenticeship and Training Trust Fund for Northern California, and Carpenters Annuity Trust Fund for Northern California, in both Case Nos. C-90-02439 and C-90-01652.

SO ORDERED.

Dated: March 5, 1992.

/s/ David A. Dolgin
THE HONORABLE DAVID A. DOLGIN
Judge of the Superior Court

APPROVED AS TO FORM:

Dated: Feb. 27, 1992.

VAN BOURG, WEINBERG, ROGER
& ROSENFELD

By: /s/ Susan A. Dovi
SUSAN A. DOVI
Attorneys for Plaintiffs
Carpenters Health and Welfare
Trust Fund of California, et al.

Dated: Feb. 28, 1992

LITTLER, MENDELSON, FASTIFF
& TICHY
A Professional Corporation

By: /s/ Karen E. Ford
KAREN E. FORD

PROOF OF SERVICE BY MAIL

I, MICHAEL VICKERY, declare that:

I am employed in the County of San Francisco, California. I am over the age of eighteen years and not a party to the within entitled cause; my business address is 650 California Street, San Francisco, California.

On March 2, 1992, I served the attached ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS [approved as to form] on the parties in said cause by a placing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid in the United States Mail at San Francisco, California, addressed as follows:

Ms. Susan A. Dovi
VAN BOURG, WEINBERG, ROGER & ROSENFELD
875 Battery Street, Third Floor
San Francisco, CA 94111

Michael P. Quinlivan
KOUNS, QUINLIVAN & SEVERSON
2107 N. First Street, Suite 320
San Jose, Ca 95131

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on March 2, 1992, at San Francisco, California.

/s/ Michael Vickery
MICHAEL VICKERY

PROOF OF SERVICE BY MAIL

I, Rosie T. Yee, hereby declare and state:

I am over the age of eighteen years, employed in the City and County of San Francisco, California, and not a party to the within action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108-2693.

On April 15, 1992, I served the within ORDER FOR RELEASE OF MECHANICS LIEN on the parties in said cause by placing a true copy thereof enclosed in a sealed envelope with postage prepaid thereon in the United States Post Office mail at 650 California Street, 20th Floor, San Francisco, California 94108 addressed as follows:

Ms. Susan A. Dovi
VAN BOURG, WEINBERG, ROGER & ROSENFELD
875 Battery Street, Third Floor
San Francisco, CA 94111

I am readily familiar with the Firm's practice for collection and processing of correspondence for mailing with the United States Postal Service.

The envelope addresesd to the above party was sealed and placed for collection by the Firm's messengers and will be deposited today with the United States Postal Service in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 15, 1992, at San Francisco, California.

/s/ Rosie T. Yee
ROSIE T. YEE

APPENDIX C

First Appellate District, Division Three, No. A057162
5031077

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA
IN BANK

CARPENTERS HEALTH AND WELFARE TRUST FUND, ETC., *et al.*,
Appellants

v.

DEVELOPERS INSURANCE COMPANY, *et al.*,
Respondents

[Filed Mar. 25, 1993]

Petition for review DENIED.

Mosk, J. is of the opinion the petition should be granted.

/s/ [Illegible]
Chief Justice